

Remarks

Claims 1-27 and 29-72 are pending in this application. New Claims 65-72 have been added to alternatively define the invention.

Claims 1-27 and 29-64 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-73 of copending Application No. 10/426,750 in view of Auer *et al.* US 5,383,467.

Continued deferment of the resolution of this issue is requested until patentable matter is identified in either or both of the applications.

Claims 1-27 and 29-64 were rejected under 35 U.S.C. 103(a) as being unpatentable over Auer *et al.* (US 5,383,467) in view of Narciso, Jr. (US 5,217,456). This rejection is respectfully traversed for the following reasons.

New claims 65-72 are directed to system that includes a controller that compares the spectral content of the optical signals to a spectral response of the intervening fluid to determine whether the probe is close enough to the vessel walls to enable assessment of the vessel walls.

The present Office Action concedes, on page 5, that this functionality is not found in the primary reference:

However, Auer et al do not disclose triggering an assessment of the vessel walls when a mechanical relationship has been determined or initiating diagnosis or treatment of the vessel walls in response to analyzing the optical signals indicative of a spectral response if the probe is determined to be close enough to the vessel walls to enable the diagnosis or treatment. In the same

This claimed functionality has only been attributed to a potential operator of Narciso system. Specifically, page 6 of the Office Action provides:

the vessel wall (i.e. an image showing stenosis, or a narrowing of the blood vessel, allows the operator to make a determination that the probe is closer to the walls of the blood vessel to enable assessment of the vessel wall). The

Thus, the Office Action only asserts that it would be obvious to determine position based on an image. In contrast, the claims require comparing spectral content of the optical signals to the spectral response of the intervening fluid to determine proximity.

Thus, these claims are distinguishable over the combination.

Regarding the remaining claims, pending Office Action acknowledges that the primary refers fails to suggest assessment of the mechanical relationship of the probe to the vessels walls.

The Office Action, however, does not assert that the secondary reference cures this defect in the teachings of the Auer Patent. It is true that the Narciso patent describes fluorescence spectral analysis, but there is no teaching in the Narciso patent to determine or assess probe head-blood vessel wall distance using the optical signals or trigger analysis based on such distance.

With this key teaching not found in the primary reference and not present in the secondary reference, there is no argument for the obviousness of the present claimed invention.

Thus, withdrawal of these rejections is requested.

It is believed that the present application is in condition for allowance. A Notice of Allowance is respectfully solicited. Should any questions arise, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

By /grant houston/
J. Grant Houston
Registration No.: 35,900
Tel.: 781 863 9991
Fax: 781 863 9931

Lexington, Massachusetts 02421
Date: May 21, 2008